



**Legislative Department
Seattle City Council
Memorandum**

Date: January 15, 2015
To: CHAHSER Committee
From: Patricia Lee, Council Central Staff

**Subject: Priority Hire Ordinance CB 118282
Potential Amendments**

On December 18, 2014 the CHAHSER Committee (Committee) identified amendments they would like for CB 118282, the Priority Hire ordinance, requested some additional information and did not have time to discuss two issues.

I have divided these amendments into three sections: Section I are amendments reflecting the Committee's December 18 discussion, Section II are potential amendments on issues identified in the December 18 memo but not yet discussed by the Committee and Section III are technical amendments.

It is anticipated the Committee will vote on both these amendments and possibly on the amended ordinance at the January 15, 2015 committee meeting.

Section I. Potential Amendments Reflecting December 18, Committee Preference

1. Calculation of Priority Worker Hours

The ordinance provides that the FAS Director will establish the percentage of labor hours to be performed by Priority Workers in the bid documents for each Covered Project, i.e. a city public work project of \$5 million or more.

The Committee preference is to amend SMC 20.37.040 p. 13 to clarify that Priority Worker hours are requirements and clarify the citywide aspirational goal is separate by having it in a separate section (C). Changes are shown in strikeout and underline.

20.37.040 Priority Hire

A. For Covered Projects which are not found impracticable under Section 20.37.020, the Director shall establish in the bid documents the required percentage of Labor Hours to be performed by Priority Workers. The Director shall establish the percentages separately for Apprentices and for Journey-level workers. Contractors and Dispatch under a PLA shall seek to first hire and dispatch Priority Workers so as to meet or exceed the required percentages.

B. For each Covered Project, the Director shall establish the greatest practicable required percentage of Labor Hours to be performed by Priority Workers by using past utilization percentages on similar public works projects from the previous three calendar years, and

~~shall increase~~~~ing~~ that percentage by no less than two full percentage points above past performance. The Director shall calibrate these required percentages ~~goals~~ annually and shall consult with the Priority Hire Implementation and Advisory Committee regarding these requirements. ~~goals~~.

C. In order to maximize the impact of this program in Economically Distressed Areas, the Director shall set project-specific requirements with the intent ~~goal~~ of achieving a total percentage of no less than 20% for all Labor Hours performed annually by Priority Workers on ~~all~~ the combined total of Covered Projects by 2016, and shall strive to achieve 40% of Labor Hours performed by Priority Workers by 2025. Annual percentage rates will ~~should~~ be measured ~~during~~ January 1- December 31 of ~~the~~ each applicable ~~specified~~ year.

CHASER Committee Vote

2. FAS Discretion to Reduce or Waive Requirements.

Recognizing the Priority Worker hours are requirements, the ordinance currently allows them to be reduced or waived if the work is required by an emergency, subject to limitations of a sole source, another funding source or agreement with a public agency, in a remote location, or superseded by safety or other legal requirements. The Executive had requested the Director's powers also allow the Director to adjust requirements: 1) if there are not enough available workers, 2) to recognize that in the first year there may be projects ready to proceed before a PLA is negotiated, and 3) to provide FAS Director discretion to tailor the needs to particular circumstances. SMC 20.37.020 p.13.

The Committee preference is to amend the ordinance to address the period of time before a PLA was negotiated. The Executive has withdrawn their other requests.

SMC 20.37.020 p. 12 would be amended as follows:

B. The Director may reduce or waive requirements or goals of this Chapter 20.37 when impracticable for a Covered Project for one or more of the following reasons: when work is required due to an emergency, when work is subject to limitations of a sole source, when requirements or goals would be inconsistent with a grant or agreement with a public agency, when requirements or goals are inconsistent with federal funding or other funding sources, when the project is in a remote location, ~~or~~ when superseded by safety or other legal requirements, or absent an executed Project Labor Agreement

CHASER Committee Vote

3. Economically Distressed Areas

The ordinance currently provides the FAS Director will establish the methodology and criteria for determining which zip codes qualify as Economically Distressed Areas in the Director's Rules. The Committee preference is to establish this in the ordinance in SMC 20.37.010 (p. 10) and strike the language in SMC 20.37.020 (C) (p. 13).

Amend SMC 20.37.010

"Economically Distressed Area means a geographic area defined by zip code and found by the Director to have a high concentration of ~~poverty, unemployment and low-educational attainment~~, individuals; 1) living at or below 200% of the Federal Poverty Level, 2) unemployed, and or 3) without a college degree, compared to other zip codes. King County zip codes with a high density per acre of at least two out of the three criteria will be identified as Economically Distressed Areas. There shall be two classes of such zip codes: Tier One zip codes located within the City of Seattle and Tier Two zip codes located within King County and outside of the City of Seattle.

~~Strike SMC 20.37.020 (C) The Director shall adopt Director's Rules that establish the benchmarks and indicators of high poverty, unemployment and low educational attainment to be used for finding a particular zip code area qualifies as an Economically Distressed Area.~~

CHASER Committee Vote

4. Apprentice Hours.

The FAS Director is currently authorized to require up to 15% of the contract labor hours be performed by apprentices on city public work projects of \$1 million or more. The current ordinance increases this amount to 20% of the contract labor hours. It also changed the language from authorized to require to shall require. The executive has requested the language be changed back to authorized to require, to provide the FAS Director flexibility and the ability to tailor requirements to the particular contract.

The Committee preference is to change the language in 20.38.005 (p.18) back to authorized to require, as shown below.

20.38.005 Apprentice requirements(~~(utilization)~~)

A. On public works contracts with an estimated construction cost of \$1 million or more, the Director is authorized to ~~shall~~ require that no less than 15% and no more than 20% of the contract Labor Hours be performed by Apprentices

CHASER Committee Vote

5. Findings

The Committee preference is to amend the Findings section of the ordinance to add the following language on p 5:

C 2. The Seawall CWA has an aspirational goal to hire 15% of the workforce from economically distressed zip codes as defined and prioritized by the City. Seawall Article IX. The City compared zip codes in King County using the following criteria;1) number of people living under 200% of the Federal Poverty Level, 2) number of unemployed individuals, and 3) number of individuals without a college degree. Zip codes with a high concentration, i.e. density per acre of at least 2 out of the 3 criteria, were identified as Economically Distressed Areas. For the Seawall project the City identified 15 zip codes in Seattle and 11 zip codes in King County.

CHASER Committee Vote

6.Core Employee

There are two amendments on the issue of Core Employee

Core Employee is defined in the ordinance as “an employee of an Open-Shop Contractor that meets the core employee criteria established under the PLA.”

6a. Number of Core Employees identified by project or contract? The Committee preference is to amend SMC 20.37.050 (p.17) to allow open shop contractors to employ as many as five core employees on each contract in a Covered Project instead of for each Covered Project.

D. The PLA shall permit an Open-Shop Contractor to employ as many as five Core Employees on each contract in a Covered Project, provided the Core Employees meet the Core Employee criteria set forth in the PLA.

CHASER Committee Vote

6b. All Core Employees may be hired first and this should be specified in the Ordinance, not left to be negotiated in the PLA. CM Harrell Amendment

The ordinance specifies that the PLA shall permit Open-Shop Contractors to employ as many as 5 Core Employees. It does not specify in what order these 5 Core Employees are to be hired, and leaves that to the PLA. In the Seawall CWA open shop contractors are allowed to hire 2 Core Employees, and the rest of their employee needs are filled from union dispatch.

If the Committee chooses to 1) specify this in the Ordinance, instead of having it negotiated in the PLA, and 2) specify that the Open-Shop contractors may select and hire up to 5 Core Employees first, the following language could be adopted. It should be noted that Open-Shop Contractor's will still have to notify the Union and identify their Core Employees and FAS will have authority to verify that they meet the definition of Core Employee.

SMC 20.37.050 (D) (p.17). The PLA shall permit an Open-Shop Contractor to employ as many as five Core Employees on each Covered Project, provided the Core Employees meet the Core Employee criteria set forth in the PLA. Open-Shop Contractors are allowed to select and hire up to 5 Core Employees before filling any further hiring needs through Dispatch. Open-Shop Contractors must notify the Union and identify their Core Employees. FAS has authority, at any time, to verify that the employees meet the definition of Core Employee as established in the PLA.

CHASER Committee Vote

7. Hiring Process

The ordinance provides that the Director will establish by Director's Rules the specific process by which Contractors, Union Dispatch and the Jobs Coordinator will collaborate to facilitate the hiring of Priority Workers.

CM O'Brien Amendment

The Hiring Process will be established in the Director's Rules, what is currently in the ordinance, but in establishing the Director's Rules the Director shall consult with the Advisory and Implementation Committee.

SMC 20.37.040 D (p.15). In order to meet the percentage of Labor Hours to be performed by Priority Workers, the Director shall require Contractors and dispatch under a PLA to first seek to employ a Priority Worker who is a Resident in an Economically Distressed Area within Seattle City limits. The second priority shall be workers from Economically Distressed Areas within King County, and then workers from any other Economically Distressed Area as needed to meet the percentage of Labor Hours to be performed by Priority Workers. The Director shall establish, in consultation with the Advisory and Implementation Committee, by Director's Rule the specific process by which Contractors, union dispatch and the Jobs Coordinator will collaborate in order to facilitate the hiring of Priority Workers.

CHASER Committee Vote

Section II. Issues not Discussed at December 18, 2015 Committee

8. Dual Benefits – Mandatory Reimbursement

A Project Labor Agreement (PLA) is signed by the City and appropriate unions. Contractors are not required to become signatory to a union contract and workers are not required to become union members to be eligible to work or participate on a PLA project.

Employers are required to contribute to the union health and benefit plans on behalf of the worker and workers are required to pay initiation and representation fees, unless initiation fees are waived by the appropriate union. As some open-shop employers provide health and pension benefits they would then sustain dual costs. These costs for the dual benefits are addressed in the ordinance by requiring the FAS Director to establish provisions within the PLA that encourage Open-Shop subcontractors to compete and participate in Covered Projects, such as reimbursing existing employer-sponsored dual health and pension costs paid by Open-Shop Contractors.

Currently the ordinance allows the FAS Director to negotiate and execute the mitigation of employer-sponsored dual health and pension costs paid by Open Shop Contractors in the PLA.

If the Committee wants to amend SMC 20.37.050(C) (p.17) to make the City's reimbursement of dual benefits mandatory they could approve the following amendment. .

C. The Director shall establish provisions within the PLA that encourage Open-Shop subcontractors to compete and participate in Covered Projects, ~~such as mitigating unique~~ including reimbursing existing employer sponsored dual-benefit health and pension costs paid by Open-Shop Contractors which are determined by the City to be compliant with usual benefits as defined in WAC 296-127-014.

CHASER Committee Vote

9. Consideration of imposing a small fee on non-compliant contractors to help fund the program.

In 2016 the Mayor and Council will review program results and determine if the program should be expanded or amended by increasing or decreasing thresholds.

If the Committee wants to include consideration of imposing a small fee on non-compliant contractors to help fund the program they could add the following language to 20.37.060 (p. 18), lines 8-10

The Mayor and Council will review program results during 2016 to determine if the program should be expanded or amended by increasing or decreasing thresholds.
Consideration should also be given to imposing a small fee on non-compliant contractors to help fund the program.

CHASER Committee Vote

10. Definitions

The committee preference is to amend SMC 20.37.010 to add the following definitions to the ordinance:

Union: is a representative labor organization whose members collectively bargain with employers to set the wages and working conditions in their respective trade or covered scope of work.

Dispatch: is the process by which a union refers workers for employment to contractors under the authority of a collective bargaining agreement. The process typically mandates the distribution of work via a “first in, first out” priority but can legally be adjusted via special agreements to allow for out of order dispatching and priority worker hiring.

Training Programs: pre-apprenticeship and/or registered apprenticeship programs.

CHASER Committee Vote

11. Priority Hire Implementation and Advisory Committee

In December, Committee members asked FAS to provide additional detail about their plans for staffing and supporting the Priority Hire Implementation and Advisory Committee.

If the Committee would like to add specificity to the ordinance about the make-up and duties of the advisory committee, it could add the following language to SMC 20.37.040 I (p.16,17):

I. The Director shall establish a Priority Hire Advisory Committee that includes representatives of the following groups; 1) labor unions, 2) community organizations, 3) Contractors, including at least one WMBE firms, and 4), Apprentice and Pre-apprentice Training Programs. The Committee shall provide an advisory role to the City regarding the implementation and effectiveness of the Priority Hire policy. Each of the four named groups above shall make nominations from among themselves for Committee representatives to the Mayor. The Mayor shall appoint no less than two and no more than three persons from each group to the Committee. The Department will convene the Committee on a regular basis, at least once every quarter, and will provide the Committee with information about program performance. The Director shall assign at least one staff member from FAS to support the work of the committee. The Committee shall submit an annual report in writing to the Mayor and City Council, and may

submit recommendations, findings or other reports to the Director, Mayor and City Council, for consideration as appropriate. The Committee shall establish rules for its procedure.

CHASER Committee Vote

Section III Technical Amendments

Despite the numerous times this ordinance has been reviewed by numerous people, there are a few proposed corrections and suggested word changes to improve readability. These are not substantive changes. In addition, to the ones below staff will clean up stray commas and extra spaces.

1. Page 7 line 8. Change 12% to 14% as the typical percent of total construction payments paid to WMBE Businesses on roadway projects.
2. Page 13; reword the section on Training Assistance as follows:

20.37.030 Training assistance

The Director may assist local Pre-apprentice or Apprentice Training Programs to encourage additional programs, classes and curriculum that may increase graduation, retention and employment rates of women, racial minorities, other pre-apprentice program participants, and or Priority Workers. ~~The Director shall establish eligibility criteria for those individuals who may require assistance overcoming barriers to training and employment on City public works projects.~~

3. Page 19 lines 21-26 on Apprentice requirements

C. The Director shall establish aspirational percentage goals for Apprentices who are women and those who are racial minorities using similar factors. Contractors may be allowed to offer propose utilization of less than below the aspirational percentage goals by when combined with substituting other efforts to meet the intent of building a trained construction workforce for a portion of the utilization percentages for women and minorities.

CHASER Committee Vote